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Report to the Rural Services and Wairarapa Committee
from Steve Blakemore, Manager, Planning and Resources

Mangatarere Stream Prosecution

1. Purpose

To inform the Committee of the outcome of the prosecution taken against S Van den Bosch and C Allomes for unconsented disturbances of the Mangatarere Stream in October 1998 and March 1999.

2. Public Excluded

Grounds for exclusion of the public under Section 48(1) of the Local Government and Official Information and Meetings Act 1987 are that the public conduct of the whole or relevant parts of the meeting would be likely to result in the disclosure of information for which good reasons for exclosure exist - that is to prejudice the maintenance of the law and the right to a fair trial.

3. Background

3.1 This matter was first reported to the Committee at its meeting on 3 December 1998 (RSW PE22). Charges were subsequently laid, and to these were added charges relating to a later March 1999 incident.

3.2 A hearing was finally set in Wellington District Court for 12 February 2000. Offences under the Resource Management Act are criminal court cases heard in a District Court. They require the prosecution to establish a criminal court standard of evidence and proof that is beyond reasonable doubt. Plaintiffs can elect trial by jury.

3.3 The defendants were both represented by J Blathwayt who sought to prove that the action was necessary to prevent serious damage to the property under Section 341 of the Resource Management Act 1991.

3.4 The case took three and a half days. Council called seven witnesses including a Wellington Fish and Game representative. Virtually all evidence had to be given orally as the defendents' lawyer would not accept written evidence.

4. Outcome

4.1 The prosecutions were not successful. In relation to the 1998 incidents Judge Treadwell accepted the defence and held that the works were necessary to prevent what was perceived as serious damage. The charges relating to the 1999 incident were dismissed due to insufficient evidence that S Van den Bosch authorised or permitted the work or that C Allomes was the contractor.

4.2 The decision regarding the 1998 charges raised a number of fundamental concerns in relation to the application of the Resource Management Act. The decision was therefore taken to engage an experienced barrister, Richard Laurenson, to review the prospects of successfully taking an appeal.

4.3 The advice obtained was that an appeal would probably not succeed and no further action has been taken. In his report Richard Laurenson commented:

"Although my opinion is that an appeal would not succeed, I do believe that Mr Van den Bosch particularly, and Mr Allomes to a lesser extent, were very lucky to succeed in their defence. I say this for two reasons.

Firstly, although obviously I have not had access to the notes of evidence nor have I seen any record of the cross-examination of the prosecution witnesses, the briefs of evidence of the prosecution witnesses portray Mr Van den Bosch as aggressive and bullheaded in his intent to carry out the work. Therefore, whatever justification there may have been for him to carry out some work, from the prosecution briefs it appears that he exercised far too much licence in what he did and how he did it. However, notwithstanding this, it appears that he obtained the sympathy of the Court.

Secondly, the Judge's decision makes loose findings and fails to address the issues before him in an ordered and systematic way. Had he done so, the Judge may have more readily recognised the strength of your case which, once the statutory defence was raised and even allowing for the plea that there was an emergency, it was founded in the degree of the breach rather than a breach simpliciter. An example of this is the weight the Judge placed on the testimony of the three lay defence witnesses when that testimony was in conflict with the evidence of the Council's experts. Almost universally the Judge preferred evidence of the defence witnesses when it was in conflict with the expert evidence. This might have been appropriate if the onus were on

the Council to exclude the statutory defence beyond reasonable doubt. But, as already noted, the onus was upon the defendants to prove the defence. The Judge does not appear to have specifically directed himself on the onus and standard of proof of the defence and then to apply that direction to the evidence. Therefore, I can well understand the frustration and annoyance now felt by you and the Wellington Regional Council about the outcome of the prosecution. It was a prosecution properly brought".

5. Discussion

5.1 The result is a large disappointment in relation to the blatant nature of the incident, the extent of bed disturbance and its effects on a trout-spawning stream. The defence taken overrides all Regional rules and the requirements to obtain consent before an activity is undertaken. Particularly disappointing was the acceptance of the bulldozer driver's testimony over corroborated and expert evidence provided by Council witnesses.

5.2 The Council's case was appropriate and was well prepared and presented. The defence appeared to be accepted by the Judge relatively early in the hearing and there was little that could be done to alter the outcome.

5.3 Nevertheless, it is a 'one off' decision and has not established new case law. According to our legal advisors, "*If similar circumstances arise in the future, we doubt that the same decision will be reached by a different Judge. Nor will this Judge's handling of the evidential issues in this case, be in any way relevant to future cases"*.

5.4 A debrief of the case is to be held with staff. A particular concern is achieving the criminal standard of proof required in such cases, particularly obtaining admissions.

5. Communication

Not appropriate.

6. Recommendation

That the Committee receives this report.

Report prepared by:	Approved for submission by:
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